

## Bond Michelle D

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**From:** Ryan, Stephen <SRyan@mwe.com>  
**Sent:** Tuesday, July 24, 2018 4:44 PM  
**To:** Vickie Hull; Corbin Kenneth C  
**Cc:** Lemons Terry L; Evans Liz E; Ransom, David; Tim Hugo (Tim.Hugo@capnet.org)  
**Subject:** Free File slides for tomorrow.  
**Attachments:** FreeFile.IRSAC.072418.pptx

### Stephen M. Ryan

Partner

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**From:** Ryan, Stephen  
**Sent:** Tuesday, July 24, 2018 3:21 PM  
**To:** 'Vickie Hull'; Kenneth.C.Corbin@irs.gov  
**Cc:** Lemons Terry L; Liz.E.Evans@irs.gov; Ransom, David; Tim Hugo (Tim.Hugo@capnet.org)  
**Subject:** Update on tomorrow.

I will be co-presenting with Mr. Hugo tomorrow for the Free File Alliance. I will be providing you a slide deck before nightfall that is critical to our joint presentation. I am planning on bringing 30 copies of the presentation and other handouts to the meeting.

We were dismayed to find out yesterday that Mr. Ventry is being permitted to attend our briefing tomorrow. That hardly seems like an effective recusal.

Since Mr. Ventry is actively lobbying the Congress not to include the House bill's position on the Free File program, FFI continues to object to his attendance tomorrow at our presentation. We respectfully believe Mr. Ventry should not be provided directly or indirectly a copy of our presentation, but we can speculate that he will be making notes throughout if he attends.

I have never seen a FACA Committee whose committee chair has published three op eds with his conclusions against a matter committed to the FACA committee's review; and where the Chair is actively lobbying the Congress against an agency program he is supposed to be evaluating in his FACA role.

Sincerely,  
Stephen Ryan

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**From:** Vickie Hull [mailto:vickie.hull@timhugo.com]  
**Sent:** Saturday, July 21, 2018 9:29 AM  
**To:** Kenneth.C.Corbin@irs.gov  
**Cc:** Lemons Terry L; Liz.E.Evans@irs.gov; Ryan, Stephen; Ransom, David; Vickie Hull  
**Subject:** Fwd: FW: Free File Follow Up. approve please and send or more likely we send.

Ken,

Thank you for your update concerning the role of Mr. Ventry in this matter. We are disappointed that Mr. Ventry has not chosen to, or not been asked to resign, which would seem more appropriate given his three articles. The second article in particular demonstrates the real goal of Mr. Ventry and his colleagues is to create an IRS Ready Return program, and demonstrates that the proponents of Ready Return seek to discredit the value of the Free File program in order to create a 'need' for Ready Return. The article also seeks to inflame partisan politics in Congress against IRS. Mr. Ventry has also been seeking Congressional staff and Member visits on this trip. It is black letter law that it is illegal for U.S. government funds to be used to lobby. I believe IRS may have a duty to prohibit reimbursement of Mr. Ventry's travel expenses if his trip includes any such lobbying visits.

I am pleased to accept IRS's invitation to attend and present on Wednesday. I will need AV equipment to project slides for the presentation.

Also, an incorrect email was used for me ([hugo@capnet.org](mailto:hugo@capnet.org)). Please use this email for further communication.

Regards,

Tim

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**From:** Corbin Kenneth C [mailto:[Kenneth.C.Corbin@irs.gov](mailto:Kenneth.C.Corbin@irs.gov)]  
**Sent:** Friday, July 20, 2018 10:58 AM  
**To:** Ryan, Stephen; [Hugo@capnet.org](mailto:Hugo@capnet.org)  
**Cc:** Lemons Terry L; Evans Liz E  
**Subject:** Free File Follow Up

Good morning Tim and Steve,

As you are aware, there have been some opinion articles published recently by the IRSAC chair, Dennis Ventry. These opinion pieces about the Free File program reflected what we believe is Mr. Ventry's opinion and not that of the IRSAC, which is preparing recommendations to IRS on ways to improve the Free File program in the future.

The IRSAC has a regularly scheduled working group session in Washington D.C. next week. While the IRSAC has had the opportunity to engage with the IRS about the Free File program in prior working sessions, we believe it would be beneficial for them to hear from you. We would like to invite you to attend the session on Wednesday, July 25 at 11:15 for one hour at our 1111 office, in the Commissioner's Conference room #3313. This is a chance for you to provide industry information about Free File that the working group can consider as it contemplates program improvement opportunities.

Also, the Commissioner has met directly with Mr. Ventry. The Commissioner explained the importance and role of the IRSAC chair position and the importance it plays in providing advice to the IRS, helping ensure the group has a shared and cohesive recommendation from all the participants. It was agreed to update The Hill article to remove the reference to the IRSAC (Mr. Ventry had taken this step prior to the meeting with the Commissioner) and not include that reference in any future articles (Mr. Ventry also took this step). Finally, the IRSAC Co-Chair – not Mr. Ventry -- will lead the future discussions and recommendations for topics related to Free-File. Mr. Ventry will recuse himself from participating or contributing to the topic of Free File.

Please let me know if you will be able to attend. Your contact for the meeting on the 25th will be John Lipold. He can be reached that day via his cell (b) (6).

Internal Revenue Service | Office Number (470) 639-3500 | Fax Number 855-863-8342

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# The IRS Free File Program

Overview

July 2018

Timothy Hugo, Executive Director

Stephen M. Ryan, General Counsel

FFI, Inc.

# This Free File Presentation

- I. Chronology and Achievements – Millions of free returns inside and outside the Program
  - Extending the value of Free File through State Free File Programs
  - Free File fillable forms
- II. Description of select built-in protections for taxpayers
- III. Attacks on Free File are deliberate and calculated in an effort to establish a government-populated system

# I. Chronology and Achievements

# Free File Chronology and Achievements

- IRS and private-sector companies establish Free File through Administrative Procedure Act (APA) Rulemaking (Federal Register, Vol. 67, Page 51621, Aug. 8, 2002).
- Since then, the Program has been renewed through succeeding Memoranda of Understanding three times under both Democratic and Republican administrations.
- 53 million federal income tax returns filed through Free File Program to date.
- The value of those 53m returns = Approximately \$1.6 billion or more.
- Additional benefits
  - Enabled qualified new entrant companies into the marketplace.
  - Consumers benefit from private-sector innovation and constantly improving software.



# Free File and VITA Returns Address Poor and Under-Served

	<u>2018 Total</u>	<u>2017 Total</u>	<u>Change</u>
• Free File	2.315m	2.171m	5.51%
• Fillable Forms	286,636	290,098	-2.42%
• Total	2.602m	2.461m	4.58%

\*\* By comparison, the Volunteer Income Tax Assistance (VITA) Program files more than 3 million federal income tax returns for under-served and low-income taxpayers and families. The cost of the VITA Program is much higher than Free File, and includes five-year contract costs of approximately \$30 million, plus costs for grantees.

# Free File Fillable Forms

- All taxpayers without regard to income level are eligible to use Free File fillable forms.

# Extending the Value of Free File: 23 State Free File Programs

- Arizona
- Arkansas
- District of Columbia
- Georgia
- Idaho
- Indiana
- Iowa
- Kentucky
- Massachusetts
- Michigan
- Minnesota
- Missouri
- Mississippi
- Montana
- New York
- North Carolina
- North Dakota
- Oregon
- Rhode Island
- South Carolina
- Vermont
- Virginia
- West Virginia

(The majority of the 42 states (plus Guam and the District of Columbia) that have state income taxes are participants in the state Free File Program. Our savings estimates do not include the value of these free state returns and electronic filing.)

# Free File Program's Benefits: Free Tax Returns **Outside** of Free File

- Professor John N. Friedman of Brown University, and formerly Special Assistant to President Obama at the National Economic Council, found in a 2013 study that FFI companies “provide substantially more free federal returns than IRS statistics reflect.”

John N. Friedman, “The IRS Free File Program: Tip of the Iceberg for Free Federal Returns,” Bloomberg BNA, Daily Tax Report (Oct. 9, 2013).

# Free Tax Returns

## Outside of Free File

- Professor Friedman, who surveyed 15 FFI companies in 2013, found that they provided nearly five times as many free federal returns (or approximately 14.3 million federal returns) on their own initiative in tax season 2013 as they did through the Free File Program (approximately 3 million federal returns).
- Professor Friedman thus concluded: “Free File, Inc., member companies provide substantially more free federal returns than IRS statistics reflect. Over the past five years, members of the Free File Alliance have provided roughly 3 million free federal returns per year as part of the Free File Program. But these companies provide nearly five times as many free federal returns on their own initiative.”

# Popularity Among Free File Users

- In a 2009 survey by the IRS, 95 percent of both traditional Free File users and users of Free File Fillable Forms said they intend to use Free File next year.
- 98 percent of traditional Free File users said that they would recommend the program to others.
- 87 percent of traditional Free File users said they were very satisfied with Free File.

## II. Free File Built-In Protections

# 1. Structure of Eligibility Requirements

“Each Member and New Market Entrant shall make its Services available to not less than 10 percent and not more than 50 percent of the individual taxpayer population . . . within the Coverage (i.e., the lowest 70% of taxpayer population calculated using AGI).

Paragraph 4.1.3(i), Seventh Memorandum of Understanding Between IRS and FFI



# 1. Structure of Eligibility Requirements (continued)

The Free File Program is structured in this manner for specific reasons –

- To ensure that a limited number of tax preparation companies do not overtake the Program;
- To ensure diversity of preparers;
- To ensure taxpayers can choose from multiple Free File offers; and
- To ensure competitive marketplace innovation.

## 2. Adherence to Security and Privacy Standards

“Each Member and New Market Entrant shall possess and provide appropriate documentation to the IRS and the Executive Director [of FFI] demonstrating that they have acquired third party security and privacy certifications which are applicable for the period the company is actively listed on the IRS Free File Website.”

Paragraph 4.1.3(v), Seventh Memorandum of Understanding Between IRS and FFI

# 3. Annual Security Testing

- “Annually before filing season launch, FFI, or its Members, will conduct penetration and vulnerability assessment of individual Members prior to the start of the filing season. The annual assessments will be conducted prior to, or concurrent with, the annual Acceptance Testing System (ATS) testing.”

Paragraph 4.6.4, Seventh Memorandum of Understanding Between IRS and FFI

## 4. Additional Requirements on Privacy

“All Members shall adhere to industry best practices to ensure the taxpayer return information entrusted to them is secure and the privacy of such information is maintained.”

Paragraph 4.3.4, Seventh Memorandum of Understanding Between IRS and FFI

## 5. Adherence to Section 7216

“Members shall only use or disclose the tax return data Members collect in provision of Services to taxpayers in accordance with the provisions of Section 7216 of the [Internal Revenue] Code.”

Paragraph 4.12, Seventh Memorandum of Understanding Between IRS and FFI

## 6. Links to Paid Sites Prohibited

“Providing an automatic link from the IRS Free File Website to a Member’s paid website will result in delisting.”

Paragraph 4.20.3, Seventh Memorandum of Understanding Between IRS and FFI

## 7. Prohibition on “Up-Selling”

“No Other Sales and Selling Activity. No additional sales or selling activity are permitted to Free File customers except as described above [e.g., sale of state tax return].”

Paragraph 4.33.5, Seventh Memorandum of Understanding Between IRS and FFI

## 8. Free Services May NOT be Conditioned

“Consortium Participants shall also agree that provisions of Free Services shall not be conditioned on obtaining an eligible taxpayer’s consent to solicitations of additional business.”

Advance Notice of Intent to Enter Agreement, Federal Register, Vol. 67, Page 51621, Aug. 8, 2002.



# 9. Functionality of Member's Website and Software Program

“Members and/or New Market Entrants will provide the Executive Director and the IRS with a link to the Member's and/or New Market Entrant's proposed Member's Free File Website . . . before the Website is expected to go live. . . . Prior to launch, the IRS and the Executive Director will review each Member's Free File Website usability. If the IRS and/or the Executive Director determine that a Member's and/or New Market Entrant's Software Program is difficult to use, and has or will result in a significant and measurable reduction in the ability of taxpayers to complete their return, the Member will not be listed on the IRS Free File Website or may be delisted until both the IRS and the Executive Director are satisfied that the issue(s) which led to the concern . . . have been addressed.”

Paragraph 4.4, Seventh Memorandum of Understanding Between IRS and FFI

- For the past five years, a former Treasury Inspector General for Tax Administration (TIGTA) auditor, who also is an expert on cybersecurity, has conducted this annual testing.

# 10. All Free File Companies Participate in the IRS Security Summit

- All current Free File companies are participants in the IRS Security Summit that began in 2015 to combat identity theft tax refund fraud, and FFI is an endorsing organization. The Security Summit has been a success.
- In 2017, the number of tax returns with confirmed identity theft was 597,000, compared to 883,000 in 2016 – a 32-percent decline. The amount of refunds protected from those fraudulent returns was \$6 billion in 2017, compared to \$6.4 billion in 2016.
- In 2015, there were 1.4 million confirmed identity theft returns totaling \$8.7 billion in refunds protected. Overall during the 2015-2017 period, the number of confirmed identity theft tax returns fell by 57 percent with more than \$20 billion in taxpayer refunds being protected.
- This illustrates the value of public-private partnerships and that success comes from marketplace innovation.

### III. Attacks on Free File Are Ideologically Based

# Attacks to Discredit Free File Are Often Ideologically Based

- The proponents of a government-sponsored tax-filing system – where government pre-populates taxpayers' return with data/information that is available to government – have attacked the Free File Program because their goal is imposition of a government-sponsored tax filing system.
- These attacks are deliberate and calculated, because Free File is a barrier to the establishment of a government-populated return.

# Key Problems with Government-Sponsored Returns

- A government-sponsored tax-filing system overturns the current American tax administration system based on Voluntary Compliance.
- It is not right -- from a fairness standpoint – that the taxpayer would be liable for IRS's work.
- IRS has a huge conflict of interest, as they would be preparing, reviewing and auditing returns. Whose side would they be on in a dispute?
- A government-sponsored tax filing system – where taxpayers' most personal financial information is sent through the U.S. Mail – is fraught with security and identity theft concerns.

# Key Problems with Government-Sponsored Returns (continued)

- A government-sponsored tax-filing system is a backdoor method of increasing taxes. Why? Many poor and under-served taxpayers would choose to not challenge the government's calculation of their taxes, and forgo important social benefits for which they are qualified and critical to their livelihood.
- The proponents of government-sponsored returns claim that their proposal will cost little. In fact, studies have shown that such federal and state systems will cost tens of millions of dollars to build, operate and maintain.
  - IRS already struggles to meet both its customer service demands and overall mission.

# Study of “Return Free Filing”

“Based on our analysis, we conclude that there is no plausible set of assumptions under which one could conclude that the benefits of implementing RFF [Return-Free Filing] would exceed the costs.”

Jeffrey A. Eisenbach, Robert E. Litan, Kevin W. Caves, “The Benefits and Costs of Implementing ‘Return Free’ Tax Filing in the U.S.,” March 2010.

# Failure of Ready Return in California

- In 1999, the Franchise Tax Board in California conducted an illegal procurement on Ready Return. A California Superior Court ordered that the procurement be ended because it violated the California Constitution and laws.
- Subsequent variations of Ready Return were attempted, but the program failed and was turned off because of a low take-up rate and higher per return costs.
- The cost per return was never made public.
- In 2012, about 80,000 used the California program out of millions of taxpayers there.



# Recent Assertions About Free File Are Factually Inaccurate

- Assertion that Free File companies engage in “predatory up-selling of paid products” taxpayers is factually inaccurate.
- Assertion that Free File companies engage in criminal activity by violating Section 7216 is factually inaccurate.
- Assertion that Free File companies “deceptively strip” taxpayers of legal remedies is factually inaccurate.
- Assertion that Free File companies negligently expose taxpayers to malicious cybersecurity threats is factually inaccurate.

# Recent Assertions About Free File Are Factually Inaccurate

- Assertion that Free File companies “deceptively strip” taxpayers of legal remedies is factually inaccurate. In reality, taxpayers are (a) given the opportunity to take advantage of extremely favorable arbitration provisions, or (b) maintain the status quo by opting out – a substantial improvement for the taxpayer.
- Assertion that Free File companies negligently expose taxpayers to malicious cybersecurity threats is factually inaccurate. The basis for this assertion is a “study” by Online Trust Alliance, which actually was a poorly camouflaged effort to try and sell FFI members software with which it has a commercial relationship.

How can we make the Free File Program  
more successful for taxpayers?